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June 9, 1954  
Letter Opinion  
No. 54-160-L

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

The Honorable Ruskin Lines  
Graham County Attorney  
Courthouse  
Safford, Arizona

Re: Recovery of taxes lost by illegal exemption

Dear Mr. Lines:

You state that a widow of Graham County was allowed an exemption from ad valorem taxes in excess of that to which she was entitled under the law and ask what remedies are available for collecting the taxes illegally exempted?

The statutory system of ad valorem taxation provides two means of recouping lost taxes by placing the "escaped" or "omitted" property on the tax rolls.

Section 73-402, A.C.A. 1939, outlining the county assessor's duties in connection with assessments, provides:

"73-402. Assessments--When and how made.--  
\* \* \* Any property discovered to have escaped assessment shall be assessed at its full cash value for the current year and each year it escaped assessment."

Section 73-418, A.C.A. 1939, which relates to the duty of the board of equalization provides:

"73-418. Omitted property to be placed on roll.--\* \* \* The board shall require the assessor to place on the assessment roll and to assess any property subject to taxation not on the assessment roll; and in the absence of the assessor the board shall place any such omitted property on the assessment roll and assess it;\* \* \*"

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The exemption granted widows by Article 9, Section 2, Constitution of Arizona being limited, the property must appear on the rolls (PHOENIX v. STATE, 58 Ariz. 8, 117 P. 2d 87) and the exemption applied against the tax liability. Notwithstanding the property being thus on the rolls and evaluated by the assessor, it is the opinion of this office that receiving such an illegal exemption constitutes such property "escaped" or "omitted" property within the meaning of the above statutes. There is much authority holding on various fact situations that fraud, negligence, and mistake of law or fact which result in an invalid assessment constitute the property thus invalidly assessed "escaped" or "omitted". 51 Am. Jur., Taxation, Section 776; 24 Cal. Jur., Taxation, Section 161; Vol. I, 4th Edition, Cooley Taxation, Section 59. See also Deering Calif. Code, Rev. & Tax. Section 531. An exemption illegally granted was held to be an "omission" from assessment in the case of ARMORY REALTY CO. v. OLSEN, 210 Wis. 281, 246 N. W. 513.

The Court thus stated the proposition:

"\* \* \* it is further contended by the plaintiff that, since it appears that the lands in question were in fact listed on the assessment roll by the assessor but marked 'exempt' during the years 1922, 1923, 1924, 1926, 1927, and 1928, the assessor had no authority to reassess the property in 1925 and 1929 for 'the three next previous years.' It is argued that, since the property was in fact listed but marked exempt, it was not 'omitted from the tax roll.' The infirmity of this argument is found in the fact that the statutes specifically relate to 'property omitted from assessment,' not to 'property omitted from the tax roll.' \* \* \*

\* \* \* \* \*

\* \* \* To hold that property listed as 'exempt' by an assessor may not thereafter be reassessed as omitted property would do great violence as we view it to the spirit and purpose of section 70.44. The purpose of that statute is to permit, within the time therein specified, the reassessment of property which has been omitted

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from assessment. The questions involved in a reassessment proceeding must ever be: Was the property taxable in any of the three next previous years? If so, was it omitted from assessment? When these questions are answered in the affirmative, the property may properly be reassessed. The mere fact that an assessor has mistakenly believed that the property is exempt ought not to militate against its proper reassessment. We conclude that the assessor herein properly reassessed the property in question."

Escaped or omitted property taxes are collected along with current taxes.

Very truly yours,

EIDON R. CLAWSON  
Assistant to The  
Attorney General

ERC:cqc